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DAVID L. ANDERSON
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Facsimile: (202) 616-8470
Email: julia.heiman@usdoj.gov

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

Pursuant to 28 U.S.C. § 1746, I, Julia A. Heiman, hereby declare:

1. I am a Senior Counsel in the United States Department of Justice, Civil Division, Federal Programs Branch. I am one of the counsel for the Defendants in the above-captioned case.

1 2. The statements made herein are based on my personal knowledge, and on
2 information made available to me in the course of my duties and responsibilities as counsel for
3 the Defendants.

4 3. Defendants have designated as “Confidential” under the terms of the Protective
5 Order operative in this case certain sensitive materials produced to Plaintiff during the course of
6 discovery.

7 4. Plaintiff, in its Motion for Summary Judgment, ECF No. 311, relied on
8 information Defendants had designated as Confidential and submitted a motion under Local
9 Civil Rule 79-5 to submit the material so designated under seal. *See* ECF No. 316 (“Plaintiff’s
10 Administrative Motion”). Specifically, Plaintiff’s Administrative Motion identifies for sealing
11 Exhibits 6–10 to the Declaration of Lee Rubin, submitted in support of Plaintiff’s Motion for
12 Summary Judgment, ECF No. 312, based on Defendants’ designation of those materials as
13 Confidential.

14 5. Upon further review of Exhibits 6–10, Defendants have determined that only a
15 subset of those materials require protection from disclosure, and that the balance of those
16 materials may be filed on the public record. In particular, Defendants have determined that
17 Exhibits 6–8 may be filed in their entirety on the public record. However, Defendants
18 respectfully request that the Court seal three limited categories of information in Exhibits 9 and
19 10. Defendants have attached as Exhibit A hereto unredacted versions of Exhibits 9 and 10
20 highlighting the narrowed proposed redacted material. Defendants further submit as Exhibit B
21 hereto versions of Exhibit 6–10 that may be publicly disclosed, striking through any
22 “Confidential” designations in all five exhibits, and reflecting proposed redactions to Exhibits 9
23 and 10. Because Defendants seek to protect only a subset of the material addressed in Plaintiff’s
24 Administrative Motion, Defendants also submit herewith a modified proposed order specifying
25 the limited information from Exhibits 9 and 10 that Defendants now ask the Court to seal.

26 6. The first category of information that Defendants seek to protect from disclosure
27 is the names of FBI employees who are not members of the Senior Executive Service (“SES”).
28

1 7. I have been advised by the FBI that the FBI protects the names of such
 2 employees from public disclosure as a matter of long-standing policy. Thus, unlike most Federal
 3 employees, the names, grades, and salaries of such FBI employees are not publicly released by
 4 the United States Office of Personnel Management.

5 8. The FBI seeks to shield such information from disclosure both to protect the
 6 privacy interests of its employees, and to protect against the targeting of its employees by
 7 criminals or adversaries who may seek to gain unauthorized access to classified or otherwise
 8 sensitive information regarding the FBI's work.

9 9. On April 23, 2018, this Court granted Defendants' motion to seal analogous FBI
 10 employee information. *See* ECF No. 202.

11 10. The second category of information that Defendants seek to protect from
 12 disclosure is the mobile telephone number of a third party who was an executive at Yahoo! Inc.
 13 when the email exchange comprising Exhibit 10 occurred.

14 11. Defendants seek to protect that mobile telephone number from disclosure to
 15 protect the privacy interests of that third party.¹

16 12. Finally, the third category of information that Defendants seek to protect from
 17 disclosure is the content of an email from that third party, then an executive at Yahoo! Inc., to
 18 individuals at the FBI, regarding the lawfulness of Yahoo! Inc.'s plans to publish information
 19 regarding its receipt of national security process. Defendants do not seek to seal the content of
 20 the FBI's response, but only the content of the third party inquiry.

21 13. Defendants seek to protect the content of that third party's email from disclosure
 22 to protect the integrity of the process by which third parties provide information to the
 23 Government in the course of seeking advice to ensure the lawfulness of their actions. If
 24

25 ¹ Defendants are not seeking to seal any other contact information for third parties that
 26 appears in Exhibits 9 and 10 because Defendants understand that information to be no longer
 27 current. That remaining contact information consists of business email addresses and a business
 28 telephone number, and Defendants understand that these third parties are now employed by
 different businesses. However, Defendants seek to protect from disclosure the mobile telephone
 number appearing in Exhibit 9 because of the possibility that that is a personal mobile telephone
 number that remains current.

providers—or any third parties seeking to ensure that their actions comply with the law—believe that their private communications seeking advice from the Government will be made public, they likely will be hampered in their willingness to be open and candid in the course of seeking advice. Indeed, the prospect that such communications may be published could dissuade third parties from seeking advice from the Government altogether, a result that would be detrimental to third parties seeking assistance in their compliance efforts, as well as to the public interest more broadly.

14. For all these reasons, Defendants respectfully ask that the Court seal the above-described information in Exhibits 9 and 10, as reflected in the proposed order submitted herewith.

15. Plaintiff has indicated in its Administrative Motion that it takes no position on the propriety of sealing the information at issue. ECF No. 316 at 1.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 29, 2019, at Corona del Mar, California.

/s/ Julia A. Heiman
JULIA A. HEIMAN, Bar No. 241415
U.S. Department of Justice
Civil Division, Federal Programs Branch

Exhibit B

Versions of Exhibits 6–10 that May Be
Publicly Disclosed, Reflecting Proposed
Redactions to Exhibits 9 and 10

EXHIBIT 6

to Rubin Declaration



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

June 14, 2013

Ted Ullyot
General Counsel
Facebook
1601 Willow Road
Menlo Park, CA 94025

Re: Facebook's Pending Transparency Report

Dear Mr. Ullyot:

We appreciate your discussions with us about your proposal to disclose certain information about the volume of legal process Facebook receives.

As we discussed during our phone call on June 14, 2013, we do not intend to seek enforcement¹ of the non-disclosure provisions associated with any legal process, including FISA orders, so long as Facebook agrees to aggregate data for all of the legal process it received for intervals of six months, beginning with the period ending December 31, 2012, from any and all government entities in the United States (including local, state, and federal, and including criminal and national security-related requests) into bands of 1000, starting at zero, and broken down into two categories: the number of requests and the number of user accounts for which data was requested.

This position is an exercise of FBI discretion in light of current circumstances and the precise contours of this letter. Accordingly, our decision does not reflect the FBI's position with respect to potential disclosures by Facebook that differ in any respect from the disclosures outlined in this letter. Nor is our decision a precedent for disclosures by any other company that is in receipt of such process, even if the disclosures were made in the manner that is proposed in this letter. The national security implications of disclosures related to the receipt of such process may vary depending on the identity of the company that is making the disclosure and the overall number of disclosures by different companies. For this reason, if other companies also seek to disclose information about the volume of such process that they receive, that may alter our calculus about the implications of disclosures by Facebook. In addition, our current determination is based on our prediction about the potential national security consequences of

¹The FBI does not have the authority to negate a court order, nor can we bind state or local authorities.

the disclosures and as such we may in the future revise our position as circumstances change or as we evaluate the actual impact of your disclosures on national security.

This letter further commits Facebook to coordinate with us before making any additional public disclosures about the volume of legal process you receive, beyond the contours outlined in this letter. If we revise our position, we will notify you. We would retain the right to bring an appropriate enforcement action with respect to any future disclosures you make after you receive a notification of our change in position.

Thank you again for coordinating your proposal with us. We appreciate your efforts to reach an agreement that promotes transparency without jeopardizing our national security responsibilities to the public.

Sincerely,



Andrew Weissmann
General Counsel

EXHIBIT 7

to Rubin Declaration



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

June 14, 2013

Mr. John Frank
Vice President/Deputy General Counsel
Office of the General Counsel
Microsoft Corporation
1 Microsoft Way
Redmond, WA 98052

Re: Microsoft's Pending Transparency Report

Dear Mr. Frank:

We appreciate your discussions with us about your proposal to disclose certain information about the volume of legal process Microsoft receives.

As we discussed during our phone call on June 14, 2013, we do not intend to seek enforcement¹ of the non-disclosure provisions associated with any legal process, including FISA orders, so long as Microsoft agrees to aggregate data for all of the legal process it received in intervals of six months, beginning with the period ending December 31, 2012, from any and all government entities in the United States (including local, state, and federal, and including criminal and national security-related requests) into bands of 1000, starting at zero, and broken down into two categories: the number of requests and the number of user accounts for which data was requested.

This position is an exercise of FBI discretion in light of current circumstances and the precise contours of this letter. Accordingly, our decision does not reflect the FBI's position with respect to potential disclosures by Microsoft that differ in any respect from the disclosures outlined in this letter. Nor is our decision a precedent for disclosures by any other company that is in receipt of such process, even if the disclosures were made in the manner that is proposed in this letter. The national security implications of disclosures related to the receipt of such process may vary depending on the identity of the company that is making the disclosure and the overall number of disclosures by different companies. For this reason, if other companies also seek to disclose information about the volume of such process that they receive, that may alter our

¹ The FBI does not have the authority to negate a court order, nor can we bind state or local authorities.

calculus about the implications of disclosures by Microsoft. In addition, our current determination is based on our prediction about the potential national security consequences of the disclosures and as such we may in the future revise our position as circumstances change or as we evaluate the actual impact of your disclosures on national security.

This letter further commits Microsoft to coordinate with us before making any additional public disclosures about the volume of legal process you receive, beyond the contours outlined in this letter. If we revise our position, we will notify you. We would retain the right to bring an appropriate enforcement action with respect to any future disclosures you make after you receive a notification of our change in position.

Thank you again for coordinating your proposal with us. We appreciate your efforts to reach an agreement that promotes transparency without jeopardizing our national security responsibilities to the public.

Sincerely,



Andrew Weissmann
General Counsel

EXHIBIT 8

to Rubin Declaration

June 15, 2013

Jane C. Horvath
Director of Global Privacy
1 Infinite Loop
Cupertino, CA 90514

Re: Apple's Transparency Report

Dear Ms. Horvath:

We appreciate your discussion with us about your proposal to disclose certain information about the volume of legal process Apple receives.

As we discussed during our phone call on June 15, 2013, we do not intend to seek enforcement¹ of the non-disclosure provisions associated with any legal process, including FISA orders, in connection with the aggregate data described below, so long as Apple aggregates data for all of the legal process it received for intervals of six months, beginning with the period ending May 31, 2013, from any and all government entities in the United States (including local, state, and federal, and including criminal and national security-related requests) into bands of 1000, starting at zero, and which you may break down into one or both of the following two categories: the number of requests and the number of user accounts for which data was requested.

This position is an exercise of FBI discretion in light of current circumstances and the precise contours of this letter. Accordingly, our decision does not reflect the FBI's position with respect to potential disclosures by Apple that differ in any respect from the disclosures outlined in this letter. Nor is our decision a precedent for disclosures by any other company that is in receipt of such process, even if the disclosures were made in the manner that is proposed in this letter. The national security implications of disclosures related to the receipt of such process may vary depending on the identity of the company that is making the disclosure and the overall number of disclosures by different companies. For this reason, if other companies also seek to disclose information about the volume of such process that they receive, that may alter our calculus about the implications of disclosures by Apple. In addition, our current determination is

¹ The FBI does not have the authority to negate a court order, nor can we bind state or local authorities.

based on our prediction about the potential national security consequences of the disclosures and as such we may in the future revise our position as circumstances change or as we evaluate the actual impact of your disclosures on national security.

This letter further commits Apple to coordinate with us before making any additional public disclosures about the volume of legal process you receive, beyond the contours outlined in this letter. If we revise our position, we will notify you. We would retain the right to bring an appropriate enforcement action with respect to any future disclosures you make after you receive a notification of our change in position.

Thank you again for coordinating your proposal with us. We appreciate your efforts to reach an agreement that promotes transparency without jeopardizing our national security responsibilities to the public.

Sincerely,

Andrew Weissmann
General Counsel

~~CONFIDENTIAL~~

14CV4480TW001810

EXHIBIT 9

to Rubin Declaration

Herring, Jason V.

From: Herring, Jason V.
Sent: Monday, June 17, 2013 6:35 PM
To: maureen.delduca@teamail.com
Cc: [REDACTED]
Attachments: Transparency letter_Model PDF.pdf

Maureen,

Nice speaking with you today...

Attached is a draft letter that lays out the terms consistent with what we discussed. Please take a look and let me know if you have any questions or concerns.

Regards. Jason

Jason V. Herring
Deputy General Counsel
Office of the General Counsel
Federal Bureau of Investigation

[REDACTED] (S)

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~~CONFIDENTIAL~~

14CV4480TW001814

June 17, 2013

ADDRESS
ADDRESS
ADDRESS
ADDRESS

Re: X Company's Transparency Report

Dear :

We appreciate your discussion with us about your proposal to disclose certain information about the volume of legal process X Company receives.

As we discussed during our phone call on June 17, 2013, we do not intend to seek enforcement¹ of the non-disclosure provisions associated with any legal process, including FISA orders, in connection with the aggregate data described below, so long as X Company aggregates data for all of the legal process it received for intervals of six months, beginning with the period ended December 31, 2012, from any and all government entities in the United States (including local, state, and federal, and including criminal and national security-related requests) into bands of 1000, starting at zero, and which you may break down into one or both of the following two categories: the number of requests and the number of user accounts for which data was requested.

This position is an exercise of FBI discretion in light of current circumstances and the precise contours of this letter. Accordingly, our decision does not reflect the FBI's position with respect to potential disclosures by X Company that differ in any respect from the disclosures outlined in this letter. Nor is our decision a precedent for disclosures by any other company that is in receipt of such process, even if the disclosures were made in the manner that is proposed in this letter. The national security implications of disclosures related to the receipt of such process may vary depending on the identity of the company that is making the disclosure and the overall number of disclosures by different companies. For this reason, if other companies also seek to disclose information about the volume of such process that they receive, that may alter our calculus about the implications of disclosures by X Company. In addition, our current

¹ The FBI does not have the authority to negate a court order, nor can we bind state or local authorities.

~~CONFIDENTIAL~~

14CV4480TW001815

determination is based on our prediction about the potential national security consequences of the disclosures and as such we may in the future revise our position as circumstances change or as we evaluate the actual impact of your disclosures on national security.

This letter further commits X Company to coordinate with us before making any additional public disclosures about the volume of legal process you receive, beyond the contours outlined in this letter. If we revise our position, we will notify you. We would retain the right to bring an appropriate enforcement action with respect to any future disclosures you make after you receive a notification of our change in position.

Thank you again for coordinating your proposal with us. We appreciate your efforts to reach an agreement that promotes transparency without jeopardizing our national security responsibilities to the public.

Sincerely,

Andrew Weissmann
General Counsel

~~CONFIDENTIAL~~

14CV4480TW001816

EXHIBIT 10

to Rubin Declaration

Herring, Jason V.

From: Herring, Jason V.
Sent: Monday, September 16, 2013 4:57 PM
To: [REDACTED]
Cc: [REDACTED]; Bondy, Thomas M.
Subject: FW: Yahoo Transparency Report

[REDACTED],

(I), (K), (L) Jason

From: Herring, Jason V.
Sent: Tuesday, September 03, 2013 3:58 PM
To: 'Aaron Altschuler'; Weissmann, Andrew; [REDACTED]
Cc: [REDACTED]
Subject: RE: Yahoo Transparency Report

Thanks, Aaron.

I see one issue....For the agreement we made allowing for disclosure of the aggregate number of US Government requests (in ranges of 1000), including both criminal and national security process....that one aggregate number includes NSLs. That is, NSLs cannot be reported separately, even in bands of 1000.

We are requiring the same of other companies who want to include national security process in their transparency reports.

I would be happy to discuss if you want to give me a call. Regards. Jason

Jason V. Herring
Deputy General Counsel
Office of the General Counsel
Federal Bureau of Investigation

(S)

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From: Aaron Altschuler [mailto:altschul@yahoo-inc.com]
Sent: Tuesday, September 03, 2013 3:30 PM
To: Weissmann, Andrew; [REDACTED] Herring, Jason V.
Subject: Yahoo Transparency Report

~~CONFIDENTIAL~~

14CV4480TW001718

Aaron Altschuler
VP & Associate General Counsel – Global Law Enforcement and Security
Yahoo! Inc.
Direct: 408.349.6493
Mobile: [REDACTED]



U.S. Department of Justice

Federal Bureau of Investigation

Office of the General Counsel

Washington, D.C. 20535

June 17, 2013

Mr. Aaron Altschuler
Vice President/Associate General Counsel
Yahoo, Inc.
701 First Avenue
Sunnyvale, CA 94089

Re: Yahoo Inc.'s Transparency Report

Dear Mr. Altschuler:

We appreciate your discussion with us about your proposal to disclose certain information about the volume of legal process Yahoo, Inc. (Yahoo) receives.

As we discussed during our phone call on June 17, 2013, we do not intend to seek enforcement¹ of the non-disclosure provisions associated with any legal process, including FISA orders, in connection with the aggregate data described below, so long as Yahoo aggregates data for all of the legal process it received for intervals of six months, with the first period covering December 1, 2012, through May 31, 2013, from any and all government entities in the United States (including local, state, and federal, and including criminal and national security-related requests) into bands of 1000, starting at zero, and which you may break down into one or both of the following two categories: the number of requests and the number of user accounts for which data was requested.

This position is an exercise of FBI discretion in light of current circumstances and the precise contours of this letter. Accordingly, our decision does not reflect the FBI's position with respect to potential disclosures by Yahoo that differ in any respect from the disclosures outlined in this letter. Nor is our decision a precedent for disclosures by any other company that is in receipt of such process, even if the disclosures were made in the manner that is proposed in this letter. The national security implications of disclosures related to the receipt of such process may vary depending on the identity of the company that is making the disclosure and the overall number of disclosures by different companies. For this reason, if other companies also seek to disclose information about the volume of such process that they receive, that may alter our

¹ The FBI does not have the authority to negate a court order, nor can we bind state or local authorities.

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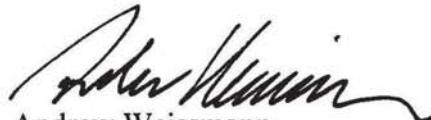
14CV4480TW001726

calculus about the implications of disclosures by Yahoo. In addition, our current determination is based on our prediction about the potential national security consequences of the disclosures and as such we may in the future revise our position as circumstances change or as we evaluate the actual impact of your disclosures on national security.

This letter further commits Yahoo to coordinate with us before making any additional public disclosures about the volume of legal process you receive, beyond the contours outlined in this letter. If we revise our position, we will notify you. We would retain the right to bring an appropriate enforcement action with respect to any future disclosures you make after you receive a notification of our change in position.

Thank you again for coordinating your proposal with us. We appreciate your efforts to reach an agreement that promotes transparency without jeopardizing our national security responsibilities to the public.

Sincerely,



Andrew Weissmann
General Counsel

~~CONFIDENTIAL~~

14CV4480TW001727

Herring, Jason V.

From: Herring, Jason V.
Sent: Monday, June 17, 2013 5:02 PM
To: altschul@yahoo-inc.com
Cc: [REDACTED]
Subject: Transparency Agreement
Attachments: Transparency letter_Model PDF.pdf

Aaron,

Attached is a draft letter that lays out the terms consistent with what we discussed. Please take a look and let me know if you have any questions or concerns.

I understand that time is of the essence. If you'll send your proposed release to me, we'll return any comments to you asap.

Who will be the committing official on behalf of Yahoo?

I would be happy to move this along quickly. Regards. Jason

Jason V. Herring
Deputy General Counsel
Office of the General Counsel
Federal Bureau of Investigation

(S)

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~~CONFIDENTIAL~~

14CV4480TW001811

June 17, 2013

ADDRESS
ADDRESS
ADDRESS
ADDRESS

Re: X Company's Transparency Report

Dear :

We appreciate your discussion with us about your proposal to disclose certain information about the volume of legal process X Company receives.

As we discussed during our phone call on June 17, 2013, we do not intend to seek enforcement¹ of the non-disclosure provisions associated with any legal process, including FISA orders, in connection with the aggregate data described below, so long as X Company aggregates data for all of the legal process it received for intervals of six months, beginning with the period ended December 31, 2012, from any and all government entities in the United States (including local, state, and federal, and including criminal and national security-related requests) into bands of 1000, starting at zero, and which you may break down into one or both of the following two categories: the number of requests and the number of user accounts for which data was requested.

This position is an exercise of FBI discretion in light of current circumstances and the precise contours of this letter. Accordingly, our decision does not reflect the FBI's position with respect to potential disclosures by X Company that differ in any respect from the disclosures outlined in this letter. Nor is our decision a precedent for disclosures by any other company that is in receipt of such process, even if the disclosures were made in the manner that is proposed in this letter. The national security implications of disclosures related to the receipt of such process may vary depending on the identity of the company that is making the disclosure and the overall number of disclosures by different companies. For this reason, if other companies also seek to disclose information about the volume of such process that they receive, that may alter our calculus about the implications of disclosures by X Company. In addition, our current

¹ The FBI does not have the authority to negate a court order, nor can we bind state or local authorities.

determination is based on our prediction about the potential national security consequences of the disclosures and as such we may in the future revise our position as circumstances change or as we evaluate the actual impact of your disclosures on national security.

This letter further commits X Company to coordinate with us before making any additional public disclosures about the volume of legal process you receive, beyond the contours outlined in this letter. If we revise our position, we will notify you. We would retain the right to bring an appropriate enforcement action with respect to any future disclosures you make after you receive a notification of our change in position.

Thank you again for coordinating your proposal with us. We appreciate your efforts to reach an agreement that promotes transparency without jeopardizing our national security responsibilities to the public.

Sincerely,

Andrew Weissmann
General Counsel

~~CONFIDENTIAL~~

14CV4480TW001813

JOSEPH H. HUNT
Assistant Attorney General
DAVID L. ANDERSON
United States Attorney
ANTHONY J. COPPOLINO
Deputy Branch Director
JULIA A. HEIMAN
Senior Counsel
CHRISTOPHER HEALY
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch

P.O. Box 883
Washington, D.C. 20044
Telephone: (202) 616-8480
Facsimile: (202) 616-8470
Email: julia.heiman@usdoj.gov

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

TWITTER, INC.,) Case No. 14-cv-4480-YGR
Plaintiff,)
v.)
WILLIAM P. BARR, United States)
Attorney General, *et al.*,)
Defendants.)
[PROPOSED] ORDER

The Court having considered the Plaintiff's Administrative Motion to File Under Seal Exhibits 6–10 of the Rubin Declaration, and the supporting Declaration of Julia A. Heiman Submitted Pursuant to Local Rule Civil Rule 79-5(E), IT IS HEREBY ORDERED that the

1 Plaintiff's Administrative Motion is GRANTED with respect to the three categories of
 2 information identified for protection in Defendants' supporting declaration. Specifically, IT IS
 3 HEREBY ORDERED that:

Document or Portion of Document Sought to be Sealed	Evidence Offered in Support of Sealing	Order
FBI employee name identified for protection in Exhibit 9, page 14CV4480TW001814	Heiman Declaration ¶¶ 6–9	
FBI employee names identified for protection in Exhibit 10, page 14CV4480TW001718	Heiman Declaration ¶¶ 6–9	
Communication from third party provider to FBI identified for protection in Exhibit 10, page 14CV4480TW001719	Heiman Declaration ¶¶ 12–13	
Mobile telephone number of third party identified for protection in Exhibit 10, page 14CV4480TW001719	Heiman Declaration ¶¶ 10–11	
FBI employee name identified for protection in Exhibit 10, page 14CV4480TW001811	Heiman Declaration ¶¶ 6–9	

19
 20
AND IT IS SO ORDERED.

21 Dated: _____

22
 23
 24 HON. YVONNE GONZALEZ ROGERS
 25 UNITED STATES DISTRICT JUDGE
 26
 27
 28